

APPEAL NO. 010705

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2001. With regard to the disputed issue before her, the hearing officer determined that the appellant (claimant) did not sustain an injury to her low back in addition to the injuries to her right and left shoulders. The claimant has appealed, contending that her evidence established that she has a low back injury related to other injuries that she incurred on _____. The respondent (carrier) contends that the claimant did not timely file her appeal and, in the alternative, urges the sufficiency of the evidence to support the challenged findings.

DECISION

A timely appeal not having been filed by the claimant with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 010112, decided February 12, 2001.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on March 8, 2001, under a cover letter of the same date. The claimant states that she received the decision on March 17, 2001. However, pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, which, in this case, was Tuesday, March 13, 2001. The claimant provides no explanation for not receiving the decision until March 17, 2001. The last day for the claimant's appeal to have been timely mailed was Wednesday, March 28, 2001, and the last day for the claimant's appeal to have been timely received by the Commission was Monday, April 2, 2001. The envelope which contained the claimant's appeal bears a postal stamp date of March 31, 2001, and was received by the Commission on April 5, 2001. The envelope containing the claimant's appeal reflects that she mailed her appeal to a post office box number no longer used by the Commission despite the mailing instructions in the Commission's cover letter of March

8, 2001, stating the correct mailing address. Since the appeal was mailed after March 28, 2001, and was not received until three days after April 2, 2001, it was not timely filed.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge